

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response
(SUPPLEMENTAL)**

PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE
AVAILABILITY OF CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION

Public Hearing Dates: January 22, 2004

May 20, 2004

Agenda Item No.: 04-1-4

Below are additional objections or recommendations made by the Engine Manufacturers Association (EMA) in an attachment to its January 21, 2004, letter sent to the Air Resources Board (ARB). These comments were made in regards to the specific service information regulation amendments proposed on December 5, 2003. The numbering of the comments are continued from the original Final Statement of Reasons document posted to the ARB's website (<http://www.arb.ca.gov/regact/cmvsip04/fsor.pdf>) on November 24, 2004, and all references to other comments are with respect to this original document. The agency's response explaining how the proposed action was changed to accommodate an objection or recommendation, or the reasons for making no change follow the comment summaries.

76. Comment: The heavy-duty industry has not been able to build the systems infrastructure necessary to automatically capture all of the data required by the service information rule and what we anticipate will be required by the heavy-duty on-board diagnostic (OBD) requirements for 2007 model year and beyond. At this point in time, the information systems that would be required to identify and report threshold information, calibration verification numbers (CVNs), or other calibration-specific information called out in the service information regulation proposal would need to be developed. In its Initial Statement of Reasons, the ARB only considered the costs of developing a website and publishing information that already existed, but did not include the costs for infrastructure systems development needed to gather and report the required information to websites. Additional lead time is needed not only for compliance with the service information proposal, but also for working through specifics on what the rule needs to look like in the heavy-duty context. (EMA)

Agency Response: See agency response to Comment #2. The service information rule does not require manufacturers to develop significant amounts of data beyond what manufacturers will need to provide to dealerships and authorized service providers to repair detected malfunctions as manufacturers begin to implement engine manufacturer diagnostic (EMD) or on-board

diagnostic (OBD) systems on heavy-duty engines. As such, the rule only requires that engine manufacturers provide aftermarket service and parts providers the same access to information over the internet that is presently provided to its dealerships and authorized service providers. Therefore, the primary cost of complying with the service information access requirements lies in the development, implementation, and maintenance of the websites that deliver access to the information. Accordingly, the ARB believes that manufacturers have been provided with sufficient lead time. The lead time that has been provided is significantly longer than that which was provided to the light- and medium-duty vehicle manufacturers, whose websites are inherently broader in scope and more complex because of the larger number of vehicle models and engine families produced and because of the amount of additional information that must be made available by these manufacturers under the service information rule. (See Agency Response to Comments 79 and 80, *infra*.) Cost issues are discussed in detail in the “Economic Impacts” portion of the ARB’s Staff Report.

77. Comment: The definition of “covered person” in Title 13, California Code of Regulations (13 CCR) section 1969(c)(4) does not give heavy-duty vehicle manufacturers a method to validate that the person requesting parts, tooling, or service information is a legitimate covered person. This issue also relates to the training provided to tool users. (EMA)

Agency Response: See agency response to Comment #34. Nothing in the regulation prevents a manufacturer from asking potential information users to demonstrate that they fall under the definition of a “covered person” should it wish to do so. The ARB staff does not believe that there is any more efficient method it could develop to establish the legitimacy of a covered person. To the best of ARB staff’s knowledge, light- and medium-duty vehicle manufacturers currently covered by the regulation have not sought to establish “covered person” legitimacy for potential information users because the practice essentially amounts to the turning away of paying customers. Therefore, any ARB-developed method would likely be largely or completely unused. The concerns regarding the training of diagnostic tool users is no longer at issue in that the requirement was deleted from the final regulation.

78. Comment: The definitions of “emission-related motor vehicle information” and “emission-related motor vehicle part” in Title 13, California Code of Regulations (13 CCR) sections 1969(c)(7) and (c)(8), respectively, are far too broadly defined for the heavy-duty industry. Appropriate changes must be made in order to avoid overly broad and inappropriate application of the rule’s requirements. (EMA)

Agency Response: The regulatory definitions are essentially identical to the definitions provided in Health and Safety Code Section 39027.3. ARB believes the definitions sufficiently and appropriately cover the full range of information and vehicle parts that can impact a heavy-duty vehicle’s emissions. To the extent that the commentor is concerned that an engine manufacturer may have

to provide information for a heavy-duty truck component produced by another company should that component be considered to fall under the definition, 13 CCR section 1969 (d)(1) was modified to make clear that manufacturers are only responsible for providing information and tools relative to the portion of the vehicle that they have certified in California. See agency response to Comment #16.

79. Comment: In 13 CCR section 1969(d)(1), off-board reporting (CVN) of each calibration code should be delayed because the infrastructure does not exist to link the code to the CVN until at least a later phase of the heavy-duty OBD requirements is implemented. All requirements that refer to publishing threshold values for emission-related monitors should be delayed until a later phase of OBD is implemented, because the infrastructure to automatically gather that information and publish it does not exist. (EMA)

Agency Response: Reporting of Calibration Verification Numbers (CVNs) is not required by the existing EMD monitoring requirements. Therefore, there is no requirement for manufacturers to report any information about CVNs at this time. A CVN requirement is likely to be adopted as part of the next round of OBD regulations. The impact of the service information rule on such a requirement would be considered at that time and in that context, which will fulfill the commentor's request.

80. Comment: While manufacturers believe they can supply general information regarding the OBD monitors as they are expected to exist in 2007, the requirement to provide a description of enabling conditions and monitor-specific drive cycle information, typical malfunction thresholds, and non-typical parameters is not feasible in that timeframe. (EMA)

Agency Response: See agency response to Comments #2 and #79. Heavy-duty diesel manufacturers will only need to provide existing monitor-specific drive cycle information, and there is no requirement for "mode 6" data since it is not applicable to heavy-duty vehicles. However, it should be possible for all other information required by 13 CCR section 1969(d)(2) to be made available by the 2007 model year timeframe considering that such information will be necessary for dealers and authorized service providers to service OBD equipped engines.

81. Comment: The information requested in 13 CCR section 1969(d)(2)(C) is not useful for test drives, because two-trip monitors would make it very difficult for service providers to verify whether a repair is complete, making the requirement infeasible. If a certain two-trip monitor requires special engine operating conditions that requires a heavy-duty vehicle to be driven, this would require a special drivers license to drive a class 8 heavy-duty vehicle. This makes verifying repair on a heavy-duty vehicle difficult and expensive. (EMA)

Agency Response: The description of enabling conditions for OBD monitors is specifically required by Health and Safety Code Section 43105.5 (a)(4)(C), and is

useful for verification of repairs even without an on-road test drive. Regarding drive cycle information, Manufacturers are required under 1969(d)(2)(C) only to make available drive cycle information that has already been created by the manufacturer. It does not require the manufacturer to otherwise generate such information. As such, there should be little or no burden on the manufacturer in only making existing information available to the aftermarket. Despite the difficulties mentioned in the comment, the ARB staff expects that many independent service providers will have the ability to verify the effectiveness of repairs using on-road test drives.

82. Comment: It is recommended that the requirement in 13 CCR section 1969(d)(2)(D) to list each OBD monitor sequence be removed. This information would not be useful to service personnel. (EMA)

Agency Response: Access to OBD monitoring sequence information is specifically required by Health and Safety Code Section 43105.5 (a)(4)(D). The ARB believes that the monitor sequence for each OBD monitor is important to service personnel from the standpoint of knowing how and when a monitor functions, especially when attempting to verify the effectiveness of repair work.

83. Comment: The requirement in 13 CCR section 1969(d)(2)(F) to indicate OBD parameter deviations would make it difficult to develop a system to automatically gather calibration releases. Trying to track calibration revisions, their impact on thresholds, CVNs, etc., manually is not feasible across thousands of calibrations. Systems need to be developed to be able to pull this information to be associated with specific OBD classifications and then publish it to the field. (EMA)

Agency Response: See agency responses to Comments #2 and #79. This information is specifically required by Health and Safety Code Section 43105.5(a)(4)(F). It is important for technicians to know specifically how the OBD system is designed on an engine that is being serviced. The existence of OBD parameters that differ significantly from published information may greatly complicate the repair of detected emission-related problems.

84. Comment: Aftermarket tool support required by 13 CCR section (d)(2)(G) should be delayed beyond 2007 due to simply trying to set up internal infrastructure gather, publish, and maintain information. (EMA)

85. Comment: Generic scan tool support as required by 13 CCR section (d)(2)(H) should be delayed until all OBD requirements are defined and implemented, and data infrastructure systems are built to the final, defined OBD requirements. Reorganization of code to prevent divulging specific algorithms, codes, or calibration data that are proprietary to the engine manufacturer will take substantial time. (EMA)

86. Comment: Availability of heavy-duty tools and data stream and bi-directional control information as required by 13 CCR section 1969(f)(2) will require

extensive time and work to organize electronic control module (ECM) software code so that access to proprietary code cannot be obtained by the aftermarket. Manufacturer-specific tools that fall within the price guidelines can be provided to anyone that requests it with the appropriate training. Unlike the limited calibration changes allowed by light-duty tools, heavy-duty service providers must be given the ability to take a particular feature out of its programmed range in order to properly diagnose and test an engine. To allow third-party providers to undertake any such reconfiguring would require engine manufacturers to set up a completely new and different approach to how they provide software, updates, programming modules for service parts, etc. (EMA)

Agency Response to Comments #84-86: See agency response to Comments #2, #3-4, #5-6, #12-13, and #18-22. Tools and reprogramming equipment availability requirements have been deleted from this rulemaking for heavy-duty vehicles. The ARB plans to revisit the tools and tool information availability issue in the next year when full OBD requirements will be proposed for 2010 model year and later heavy-duty vehicles.

87. Comment: The complex nature of the heavy-duty industry points out potential liability issues. In this industry there are typically a number of engine ratings that may have unique software and hardware configurations. Improperly intermixing these configurations could have implications for engine performance, durability and emission control. While third-party service providers can in theory be trained to do the same configuration checks as authorized service networks, the fact that they typically service several brands of engines means that they will be less specialized and more likely to make mistakes than authorized facilities that only service engines from one manufacturer. The service information regulations must be clear that engine manufacturers will not have any warranty, in-use compliance, defect reporting, or recall liability for service on a heavy-duty engine that is not undertaken by the manufacturer. (EMA)

Agency Response: See agency response to Comments #5-6, #12-13, and #18-22. As discussed during the ARB staff's May 20, 2004 update to the Board, the regulation does not prohibit manufacturers from seeking liability protection by requiring indemnity or hold harmless agreements as a condition for providing service information and tools. However, the ARB does not agree that a manufacturers' warranty, in-use compliance, or defect reporting responsibilities for an engine should be nullified simply because an engine was serviced by an independent service provider. Under existing ARB regulation, a manufacturer may deny emission warranty coverage if there is evidence of tampering, abuse, or improper repair work. Further, ARB in-use compliance and recall provisions state that test vehicles must be properly used and maintained. Additionally, to the extent that the comment may be directed at independent, generic scan tool manufacturers, the regulation provides that manufacturers may petition the ARB to deny access to tool manufacturers that cannot produce safe and functionally accurate tools. (See 13 CCR section 1969 (f)(2)(A)).

88. Comment: In 13 CCR section 1969 (e)(2)(E), turnaround time for inquiries should be revised to state a response is required within “2 working days of receipt.” (EMA)

Agency Response: The ARB agreed with commentor on this issue and revised the language in the first 15-Day Notice to indicate that inquiries must be responded to “within 2 days of receipt, Monday through Friday” so that manufacturers do not have to consider non-business days.

89. Comment: In 13 CCR section 1969(f)(3)(B), the time required for response to providing purchased reprogramming information should make clear that “provide” means “ship” (if by mail). In addition, timing should be increased to “5 working days” (rather than 2 days). Engine manufacturers may not maintain in inventory training CDs for the complete variety of heavy-duty products, and manufacturers will need additional time to obtain inventory and respond to requests. (EMA)

Agency Response: The requirements for the availability of heavy-duty reprogramming information was deleted in the ARB’s first 15-Day Notice. However, this issue will be revisited when full OBD requirements are proposed for 2010 model year and later heavy-duty vehicles.